

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Carlos Montoya, et al.,  
Plaintiffs  
v.  
Richard Smith, et al.,  
Defendants

2:16-cv-00032-JAD-VCF

**Order Dismissing Claims**  
[ECF No. 48]

Carlos Montoya, Maria Landeros, and the estate of Eric Montoya sued the United States of America, the Las Vegas Metropolitan Police Department (“Metro”), its sheriff Douglas Gillespie, Deputy District Attorney Danielle K. Pieper, four law-enforcement officers, and inmate Raul Gonzales in connection with Eric Montoya’s death. They alleged that Metro, the FBI, and District Attorney Pieper recruited Gonzales to be a police informant; but Gonzales—a violent gang member with a long criminal record—perpetrated crime instead of investigating it, ultimately shooting and killing Montoya in order to keep his status as an informant a secret.<sup>1</sup>

In June, I dismissed plaintiffs’ claims against Metro, Sheriff Gillespie, and Pieper with leave to file an amended complaint by July 18, 2016, if they could plead true facts showing that (1) Pieper stepped into the shoes of law enforcement, (2) Sheriff Gillespie was personally involved in the events leading to Montoya’s death, or (3) Metro had an unwritten custom, policy, or history of recruiting violent criminals as informants.<sup>2</sup> I expressly cautioned that, if plaintiffs did not timely file an amended complaint, “this case w[ould] proceed against just two defendants: Marty LNU and Raul Gonzales.”<sup>3</sup>

In that same order, I gave plaintiffs until July 18, 2016, to show cause why the claims against

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<sup>1</sup> See generally ECF No. 1.

<sup>2</sup> ECF No. 44.

<sup>3</sup> *Id.* at 16.

1 “Marty LNU,” a yet unserved doe-styled defendant, should not be dismissed under FRCP 4m.<sup>4</sup> The  
2 July 18, 2016, deadline passed more than six weeks ago and plaintiffs did not file an amended  
3 complaint, show cause why their claims against Marty LNU should not be dismissed, or request an  
4 extension of time to do so.<sup>5</sup>

5 Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

- 6 • All **claims against defendant Marty LNU are DISMISSED without prejudice**  
7 under FRCP 4(m) because it does not appear that this defendant was served within 90  
8 days of the complaint’s filing<sup>6</sup>;
- 9 • All **claims against defendant Pieper are DISMISSED with prejudice** because  
10 plaintiffs’ failure to file an amended complaint demonstrates that further amendment  
11 would be futile;
- 12 • Defendant Pieper’s Motion for Involuntary Dismissal [ECF No. 48] is **DENIED** as  
13 moot;
- 14 • All **claims against defendants Metro and Sheriff Gillespie are DISMISSED with**  
15 **prejudice** because plaintiffs’ failure to file an amended complaint demonstrates that  
16 further amendment would be futile;
- 17 • This case proceeds against one remaining defendant: Raul Gonzales.

18 Dated this 8th day of September, 2016.

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21 Jennifer A. Dorsey  
22 United States District Judge  
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25 <sup>4</sup> *Id.* at 7, n.44; 16 (LNU stands for “Last Name Unknown”).

26 <sup>5</sup> Plaintiffs appealed my dismissal of their claims against defendants Richard Smith, David Sazer,  
27 and Michael Twomey based on qualified immunity, but they do not challenge the remainder of my  
28 dismissal order. *See* ECF No. 45.

<sup>6</sup> *See* ECF Nos. 1 (complaint, filed 1/7/16); 44 (order to show cause).